

**CUNA & Affiliates**

A Member of the Credit Union System

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July 8, 1997

Mr. John Galligan, Director  
Card Technology Division  
Financial Management Service  
US Department of Treasury  
Room 526, Liberty Center  
401 14th Street, SW  
Washington, DC 20227

RE: Proposal to Deliver Federal Government Payments  
Electronically to Individuals Who Do Not Have An Account

Dear Mr. Galligan:

The Credit Union National Association, which also represents the Association of Corporate Credit Unions, is pleased to comment on the Treasury Department's proposal to provide electronic delivery of Federal program benefit payments to individuals who do not have an account at a financial institution. The proposal appeared in the *Federal Register* May 9, 1997. By way of background, CUNA represents more than 90% of the nation's 12,000 state and federally chartered credit unions. There are 37 corporate credit unions located around the country that comprise ACCU.

**Introduction**

Credit unions have a long history and tradition of serving individuals of small means, placing these institutions in a uniquely advantageous position to assist Treasury in implementing the electronic benefits transfer (EBT) program. Unlike some other institutions, credit unions have an established record of reaching out to low-income communities across the country to provide financial services to individuals who were not able to receive them elsewhere. Under the National Credit Union Administration Board's field of membership policy adopted in 1994 (IRPS 94-1, Chartering and Field of Membership Manual), federal credit unions may be chartered to serve low income communities or may include adjacent low-income communities in their fields of membership. At the close of last year, 346 federal credit unions were chartered or designated as low-income, serving 820,048 members. Since 1994, seventy-seven credit unions have added low-income areas to their fields of membership, to provide services to more than 1.4 million individuals. Without these credit unions, many of their lower-income members would be deprived of a financial institution.

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Mindful of this history, CUNA and ACCU strongly support the Treasury Department's efforts to provide federal payments to individuals who do not currently belong to a credit union or have an account at another type of financial institution. We think that, depending on how Treasury structures the EBT program, credit unions could play a vital role in helping to provide electronic delivery of government benefits to individuals who do not have a financial institution account.

CUNA has met several times with Treasury officials to discuss EBT and looks forward to continuing to work with the Department as it develops the regulation so that any credit union that wishes to participate in the program will be able to do so in the least burdensome manner. We also support Treasury's goal to reduce the number of recipients who do not have an account prior to the January 1, 1999 compliance date for EBT and urge Treasury to involve credit unions, many of which are participants in the Direct Deposit program, in its marketing and educational programs.

Even though we support the concept of EBT and strongly believe credit unions should be among those institutions that are eligible for designation as a financial agent, a number of important issues relating to the implementation of electronic delivery of federal payments, which are discussed below, have not been adequately detailed in the proposal. We urge the Treasury Department to address these matters in the rulemaking process and reissue another proposal for comment that provides more specific guidance on the Department's plans to implement EBT.

### **Provisions of EBT Proposal**

The proposal would implement provisions of the Debt Collection Improvements Act, PL 104-134, which require federal agencies to convert federal payments, other than Internal Revenue Service refunds, from paper checks to electronic funds transfers. Under the statute, recipients of federal benefit payments must begin receiving those payments electronically by January 1, 1999. (As of July 26, 1996, benefit payments for new recipients must be provided electronically, unless the recipient certifies he or she does not have an account at a financial institution or an authorized agent.) More specifically, the Treasury proposal addresses how EBT payments could be provided electronically to the so-called "unbanked," including the estimated 10 million federal payment recipients who do not currently use a financial institution.

Before turning to specific aspects of the proposal, we would like to address several issues relating to the unique nature of credit unions.

### **Field of Membership**

Under the Federal Credit Union Act, a credit union may only provide services to members, and an individual may not have an account at a credit union unless he or she is a member (12 USC 1759). (There is an exception under the Act for community development (low income) credit unions which may accept nonmember deposits, 12 USC 1757(6)). Field of membership restrictions will undoubtedly curtail the number of EBT recipients that credit unions might be able to serve.

We believe that the Treasury Department, working with the National Credit Union Administration Board, should consider whether, for purposes of providing electronic government payments to individuals who do not currently have an account, credit unions should be allowed to serve individuals outside their fields of membership if they so choose. Because EBT involves public funds, and participating institutions would be agents of the Treasury, we believe the Department has the authority under 12 USC 1789a to allow state and federally chartered credit unions to offer such services to recipients outside their fields of membership (Similar authority also applies to federal credit unions under 12 USC 1767). Under 12 USC 1789a:

Any credit union the accounts of which are insured...shall be a depository of public money and may be employed as fiscal agent of the United States.  
The Secretary of the Treasury is authorized to deposit public money in any such insured credit union, and shall prescribe such regulations as may be necessary to enable such credit unions to be depositories of public money and fiscal agents of the United States. Each credit union shall perform all such reasonable duties...as may be required of it.....

We urge the Department, in consultation with NCUA, to consider the extent to which a very limited field of membership policy change could maximize credit union participation in the EBT program.

If credit unions are to participate in the EBT program, then we believe the EBT recipients they serve should be afforded the same rights, privileges and obligations that apply to other members. This would include voting rights, access to other services, and compliance with membership requirements.

We now turn to our specific comments and concerns regarding the proposal.

#### **Section 207.1, Scope**

This section states that Part 207 governs EBT, including the disbursement of funds electronically through the "selection and designation of financial institutions as agents." However, as this letter discusses below, the rule does not address how an institution is selected and designated as an agent, which we believe should be included in the regulation. This section also states that it "describes the duties of such Financial agents." As we point out below, while the proposal lists some duties of the agent, not all the duties are expressly enumerated, and we believe the requirements for an agent should be detailed in the rule.

#### **Section 207.2, Definitions**

Under this section, the term, "Direct federal electronic benefits transfer (EBT)" is defined as "a program for providing electronic access to Direct federal payments to unbanked recipients through disbursement by a financial institution acting as a Financial Agent of the United States." For the reasons stated below regarding the definitions of the terms, "disburse," and "unbanked recipient," we do not think this definition adequately describes the program and request the

Treasury to change the terminology to state:

Direct federal electronic benefits transfer (EBT) means a program for providing electronic access to Direct Federal payments to recipients who did not previously have an account at a financial institution through the process of disbursement by a financial institution acting as a Financial Agent of the United States.

One of the words defined in this section is "disburse." This word is defined as "the performance of the following duties by a Financial agent...the establishment at a financial institution of an account in the name of an unbanked recipient; the maintenance of such account; the receiving of Direct Federal payments through the ACH and crediting of Direct Federal payments to the account; and the provision of access to such account on the terms specified by the Service." We think it would be more useful to use the phrase, "process of disbursement" to encompass the duties described, rather than the word, "disburse," which is defined in Webster's Dictionary, Second College Edition as "to pay out, or expend."

Under Subsection 207.3 (3), Duties of the Financial Agent, an agent may also credit to the account payments under a State EBT program. We discuss this point below; however, if agents are expected to credit and distribute state payments, the definition of the terms "disburse" or "disbursement process" should reflect this activity.

"Eligible financial institution" is defined as "an institution eligible for designation as a Depositary and Financial Agent under any of the following provisions...." For credit unions, the relevant provisions are 12 USC 1767 and 12 USC 1789a, cited above. These provisions, coupled with the fact that the proposal does not detail the process for designating a financial agent, have led some to question whether credit unions and other types of institutions will be able to decide for themselves whether they want to participate in EBT or whether designated agents will be required to participate, with no choice in the matter. We urge Treasury to allow institutions to make this decision for themselves and to clarify in the rule that participation by institutions is voluntary. We realize that Treasury may be concerned that it will not have a sufficient number of institutions to sustain the program if participation is on a voluntary basis. However, if Treasury designs a flexible program for credit unions, as we suggest in this letter, we believe many credit unions will be eager to serve as financial agents and help Treasury provide electronic access to recipients who would not otherwise have financial institution service.

The definition of "Financial Agents" includes only financial institutions, which we believe is consistent with PL 104-134. We understand that other entities have expressed an interest in being designated Financial Agents. For instance, it has been suggested that the U.S. Postal Service could serve as an electronic delivery point for federal government benefits. In considering whether enterprises other than financial institutions should be involved, we think that, in addition to the question of legal authority, Treasury should consider whether the best interests of the recipients will be served if they are. We urge Treasury to focus primarily on removing barriers to participation for credit unions and other institutions that want to participate in the program.

The definition section also addresses the term "unbanked recipient," which is described as "a recipient who does not have an account at a financial institution." The purpose of the definition is to differentiate between the EBT program, which is for recipients who do not currently have a financial institution account, and the Direct Deposit program which provides payments to recipients who have designated the financial institution to which their benefits should be transmitted. We do not believe Treasury or Congress intended that the class of financial agents be limited to banks and believe the term "unbanked" is a misnomer. We question whether this term should be used, and suggest it would be simpler to eliminate the definition and amend Subsection 207.3 (a)(1) to state:

Establish an account in the name of each recipient who did not previously have an account with a financial institution....

Following the definitions section, the proposal moves to a listing of the duties of the financial agent under Section 207.3. As discussed above, we urge the Treasury to add a section following the definitions that discusses in detail how agents will be selected so that financial institutions will have a more complete understanding of what the selection process is and what they need to do in order to be designated as a financial agent.

### **Section 207.3, Duties of the Financial Agent**

Subsection 207.3(a)(1) provides that the agent must establish an account for the recipient, which account is eligible for federal deposit insurance and may only be closed at the direction of Treasury. However, the statute, PL 104-134, contemplates that institutions which provide such accounts will be permitted to charge the recipients "reasonable" fees to recoup the costs associated with providing and servicing these accounts. The authority to charge reasonable fees, the standard for reasonableness, and the consequences of nonpayment by the recipient should be addressed in the EBT regulation. In fact, this is one of the key issues on which Treasury needs to elicit further input from consumer and financial institution groups alike. We have additional comments regarding fees that are provided below in our comments on ATM access.

Neither the rule nor the Supplementary Information indicates the circumstances under which Treasury would require an account to be closed. The rule should provide guidance on this issue, and we ask Treasury to address it in the EBT regulation.

The Supplementary Information points out that a financial agent would not be precluded from working with one or more non-financial institutions in providing Direct Federal EBT services. The EBT rule needs to expressly address correspondent arrangements and how financial institutions may utilize such arrangements to participate in EBT. For example, many credit unions use a corporate credit union, which functions like a banker's bank, for payments services. The payments services that credit unions receive through the corporate network include automated settlement and share draft services, which allow many small credit unions to offer transaction account services to their members. Could a credit union utilize a corporate credit union, or other correspondent, to receive its EBT payments?

In subsection 207.3(2), the proposal states that the financial agent must comply with Regulation E. The Supplementary Information points out that the proposed amendment "implements legislation which exempted from the Electronic Funds Transfer Act, 'needs tested' EBT programs...established under State law." The EBT rule should clarify whether a financial agent that accepts needs tested state program disbursements, such as AFDC, need comply with Regulation E in regard to those funds. Also, under Regulation E, institutions that have assets of \$100 million or less are exempt from provisions in that regulation that apply to preauthorized transfers (except for the sections regarding compulsory use and civil and criminal liability under the Electronic Fund Transfer Act.) The Treasury rule should clarify that this exemption applies to such institutions participating in EBT.

Proposed Subsection 207.3(a)(3) provides that the Financial Agent must credit to the recipient's account Direct Federal payments that are received through the ACH. Error resolution procedures should be addressed in the rule to cover circumstances in which the government sends the wrong amount, fails to initiate a transfer or otherwise makes a mistake regarding the transmission of an EBT. It should also make clear that the government, not the institution, will be liable for the government's mistakes. For example, the rule should clarify that if an agency transmits a payment to which a recipient is not entitled and the recipient withdraws the funds, the institution is not responsible for securing the return of the funds or for making up the difference if the recipient refuses to restore the funds.

Proposed Subsection 207.3(a)(4) would require the Financial Agent to issue a debit card to each recipient served by that institution that the recipient may use to access his or her account at ATMs and POS terminals. We have several key concerns about this provision.

According to a recent CUNA survey, 6,952 credit unions, or 59% of all credit unions, would not be able to participate in EBT because they do not offer ATM services. The statute does not require that recipients have ATM access to their government payments, and we urge the Treasury to allow credit unions to participate that do not provide such services. Many of these credit unions serve low-income areas in which financial services options are very limited. If these institutions are precluded from participating in EBT, it may be difficult for Treasury to find other institutions that are willing to provide EBT services in those areas.

If Treasury determines ATM access is essential to EBT delivery, one option is for Treasury to recognize the use of a correspondent in providing ATM access. We believe that allowing credit unions to use correspondent arrangements to provide ATM services will significantly increase the number of credit unions, which serve neighborhoods and communities in which EBT recipients are located, that would be able to participate.

The issue of ATM access again raises a concern about reasonable fees. Many credit unions that do not own their own machines participate in ATM networks which are primarily owned by banks. These credit unions have no control over the fees they are charged to be part of the network. The issue of reasonable fees should be addressed in the regulation.

Under the proposal, the debit card must bear the registered service mark, Benefit Security Card. We question whether this requirement is necessary. If Treasury does go forward with this requirement, we believe it would be beneficial to the issuing institution if it could add its own logo or identifier and other typical debit card information, so that these cards would appear similar to the ATM cards the other members or customers of an institution use. We ask Treasury to clarify that this is permissible.

Under proposed Subsection 207.3(a)(5), the Financial Agent would be required to provide service to recipients "on such terms and conditions as the (Financial Management) Service specifies" and the Supplementary Information states that these customer service duties of the Financial Agent will be spelled out in detail in the Invitation for Expression of Interest or in the Financial Agency Agreement between the Service and the Financial Agent. We believe these duties should be published for comment as part of the rulemaking process, and that Treasury should enumerate these duties as part of a more detailed EBT proposal on which it seeks further comments.

Likewise, proposed Subsection 207.3(a)(6) would require the Financial Agent to perform any duties not specifically addressed in Section 207 which Treasury determines are necessary or appropriate in connection with the Direct Federal EBT program. Again, these duties, or at least examples of the kinds of additional tasks Financial Agents might be asked to perform should be addressed in the context of the rule.

In closing, CUNA and the Association of Corporate Credit Unions appreciate the opportunity to comment on this very important proposal. As stated above, we want to continue discussions with Treasury to insure all credit unions will have the option of participating in the EBT program. If you would like to discuss any points raised in this letter, please feel free to give me a call at 202-218-7769. Thank you for your consideration of our recommendations.

Sincerely,



Mary Mitchell Dunn  
Acting Director  
Regulatory Affairs